

REMARKS/ARGUMENTS

Claims 1-4, 11- 26, 28, 29, 33, 34, 38, 39, 42 and 43 are pending in the present application, of which claims 1, 4, 13, 17, 19, 23, 25, 26, 42 and 43 are the independent claims. Applicant believes that the present application is in condition for allowance, for which prompt and favorable action is respectfully requested.

Disqualification of Tiedemann as Prior Art

In Applicant's previous response dated December 8, 2009, Tiedemann (U.S. 6,396,867) was disqualified under 35 U.S.C. § 103(c) from being used as prior art in a § 103 rejection. However, the Office Action again rejected claims 11, 12, 16, 18, 22 and 24 under 35 U.S.C. § 103(a) relying on Tiedemann as prior art.

Applicant's representative discussed the disqualification of Tiedemann as prior art with the Examiner by phone on April 19, 2010. During the discussion, the Examiner agreed that Tiedemann did not qualify as prior art under 35 U.S.C. § 103(c), and indicated that we would withdrawn the finality of the Office Action and the § 103 rejection when Applicant submits a written response, which Applicant has done with this paper.

Claim Rejections – 35 USC § 102

Claims 1-4, 13-15, 17, 19-21, 23, 25, 26, 28, 29, 33, 34, 38 and 39¹ are rejected under 35 U.S.C. § 102(b) as being anticipated by Tiedemann (U.S. 6,396,867). Reconsideration and withdrawal of this rejection are respectfully requested.

Applicant respectfully reminds the Examiner that according to MPEP § 2131 “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” (emphasis added). Applicant also respectfully reminds the Examiner that in order to “establish inherency, the extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities.” See MPEP § 2112 (IV).

¹ Applicant assumes that the Examiner meant to include claims 42 and 43 in the § 102 rejection since the Examiner addressed theses claims in the discussion of the § 102 rejection on page 5 of the Office Action.

Independent claims 1, 13, 19, 25 and 42 each include the feature of receiving the forward link power control instruction on a forward link common channel. A forward link common channel is understood to refer to a channel that is shared by different users (mobile stations), and thus is common to the different users. See, e.g., paragraph [1033] and [1032] of the specification. Tiedemann is not seen to teach or suggest at least the feature of receiving a forward link power control instruction on a forward link common channel.

The Office Action cites col. 7, lines 19-26 and col. 8, 46-63 of Tiedemann as allegedly disclosing a “a forward link power control instruction received on a forward link common channel.” See page 3 of the Office Action. Applicant respectfully disagrees. In col. 7, lines 19-26, Tiedemann discloses determining “the quality of the forward link signal, as received by the remote station, by measuring the amplitude of the reverse link power control bits which are transmitted on the forward traffic channel.” In col. 8, lines 43-63, Tiedemann discusses the encoder 22 in the base station 4 with reference to Figures 2 and 3 of Tiedemann. Nowhere in these cited passages does Tiedemann disclose a “common channel,” i.e., a channel that is shared by different users.

In response to Applicant’s previous response, the Office Action states on page 2:

The examiner points the applicant to Col. 7 line 32-44, specifically wherein the ability for users to receive power control bits from multiple base stations. By being able to receive such power control bits from multiple base stations, multiple users are able to receive such power control information from the network simultaneously.

Applicant respectfully disagrees with the Office Action’s contention that col. 7, lines 32-44 of Tiedemann discloses a “common channel.” To begin, col. 7, lines 32-44 of Tiedemann clearly does not expressly disclose a “common channel.” Further, col. 7, lines 32-44 of Tiedemann does not inherently disclose a “common channel,” as the Office Action appears to contend. This is because it does not necessarily follow from the fact that multiple users are able to receive power control information from a network that the multiple users receive their power control bits from the network on a “common channel” (i.e., a channel that is shared by multiple users). In a conventional network, multiple users receive their respective power control bits from the network on separate individual channels and not on a “common channel.” Nowhere in the cited passages does Tiedemann disclose multiple users receiving their power control bits on a

“common channel” (i.e., a channel that is shared by multiple users) rather than separate individual channels.

For at least the reasons given above, Applicant submits that Tiedemann does not disclose, either expressly or inherently, the feature “a forward link power control instruction received on a forward link common channel,” as recited in independent claims 1, 13, 19, 25 and 42, and therefore fails to anticipate independent claims 1, 13, 19, 25 and 42.

Claims 2, 3, 14, 15, 20, 21, 28, 33 and 38 depend from claims 1, 13, or 19, and are therefore believed to also be allowable for at least the same reasons given above. Because each dependent claim is deemed to define an additional aspect of the invention, the individual consideration of each on its own merits is respectfully requested.

Independent claims 4, 17, 23, 26 and 43 each include the feature of transmitting the forward link power control instruction on a forward link common channel.

Tiedemann is not seen to teach or suggest at least the feature of transmitting the forward link power control instruction on a forward link common channel. Tiedemann does not teach or suggest this feature for similar reasons given above for independent claims 1, 13, 19, 25 and 42.

Accordingly, independent claims 4, 17, 23, 26 and 43 are believed to be allowable for at least the reasons given above. Claims 29, 34 and 39 depend from claims 4, 17, 23, 26 or 43, and are therefore believed to also be allowable for at least the same reasons given above. Because each dependent claim is deemed to define an additional aspect of the invention, the individual consideration of each on its own merits is respectfully requested.

Claim Rejections – 35 USC § 103

Claims 11, 12, 16, 18, 22 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tiedemann in view of Sawahashi (U.S. 5,590,409). Reconsideration and withdrawal of these rejections are respectfully requested.

In Applicant’s previous response, Applicant disqualified the Tiedemann reference as prior art under 35 USC § 103(c) for use in a 35 USC § 103 rejection. For the Examiner’s convenience, Applicant repeats arguments presented in the previous response for disqualifying the Tiedemann reference under 35 USC § 103(c) below.

According to 35 USC § 103(c):

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

In the present case, the Tiedmann reference issued as a patent on May 28, 2002, and was therefore published after the February 12, 2001 filing date of the present application. Because the Tiedmann reference published after the filing date of the present application, the Tiedmann reference could only qualify as a prior art reference under 35 USC § 102(e). Further, Applicant submits that the subject matter of the Tiedmann reference and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. Therefore, Applicant submits that the Tiedmann reference does not qualify as prior art under 35 USC § 103(c). See, e.g., MPEP 2146. Because the Tiedmann reference does not qualify as prior art, Applicant respectfully requests that the § 103 rejection of claims 11, 12, 16, 18, 22 and 24 be withdrawn.

CONCLUSION

In light of the amendments contained herein, Applicant submits that the application is in condition for allowance, for which early action is requested.

Please charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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